

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Notification of)
Violation and Imposition of Civil Penalty)
Against:)**

BETTY FORD CENTER)

Case No. 20-2011-214656


DECISION AND ORDER

The attached Stipulated Settlement is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on March 26, 2014.

IT IS SO ORDERED February 24, 2014.

MEDICAL BOARD OF CALIFORNIA

By: 
Barbara Yaroslavsky, Chair
Panel A

1 KAMALA D. HARRIS
Attorney General of California
2 GAIL M. HEPPELL
Supervising Deputy Attorney General
3 JESSICA M. AMGWERD
Deputy Attorney General
4 State Bar No. 155757
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 445-7376
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7 E-mail: Jessica.Amgwerd@doj.ca.gov
Attorneys for Complainant

8
9 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Notification of Violation
12 and Imposition of Civil Penalty Against:

13 **BETTY FORD CENTER**
39000 BOB HOPE DRIVE
14 RANCHO MIRAGE, CA 92270-3297

15 Respondent.

Case No. 20-2011-214656

OAH No. 2011070028

STIPULATED SETTLEMENT

16
17 **PARTIES**

18
19 1. Linda K. Whitney (Complainant) is the Executive Director of the Medical Board of
20 California. She brought this action solely in her official capacity and is represented in this matter
21 by Kamala D. Harris, Attorney General of the State of California; by Jessica M. Amgwerd,
22 Deputy Attorney General.

23 2. Respondent Betty Ford Center (Respondent) is represented in this proceeding by
24 attorney Fredrick M. Borges, whose address is: Beam, Brobeck, West, Borges & Rosa LLP
25 1301 Dove Street, Suite 700 Newport Beach, CA 92660-2412.

26 3. Respondent is a health care facility providing drug rehabilitation to patients.
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1 records for patient M.M. along with a signed Authorization For Release of Medical Records and a
2 copy of Business and Professions Code sections 2225 and section 2225.5. A certified copy of the
3 medical records was to be provided "within thirty days of receiving the request, authorization,
4 and notice" pursuant to Business and Professions Code sections 2225.5. Respondent admits it did
5 not provide a copy of the certified records until May 3, 2011.

6 10. Respondent agrees that if the matter proceeded to a hearing it would be subject to a
7 civil penalty in the amount of \$10,000, and agrees to be bound by the Medical Board of
8 California's settlement terms below.

9 MITIGATION

10 11. After the filing of the Notification of Violation and Imposition of Civil Penalty
11 Respondent has provided the requisite certified medical records and has implemented changes to
12 readily and timely comply with the Medical Board of California's future medical records
13 requests.

14 12. Respondent, through its counsel, has been informed and now recognizes that the
15 Medical Board of California is required under Business and Professions Code section 2313(c), to
16 report to the Legislature annually the "average and median time in processing complaints from
17 original receipt of complaint by the division for all cases at each stage . . ." Respondent
18 recognizes its conduct in failure to provide the certified patient records in a timely manner
19 undermines the Medical Board of California's ability to timely process complaints. Respondent
20 now has increased awareness of the Medical Board of California's time constraints and will
21 provide copies of the requested documents within 30 days of receipt as is required under the
22 statute.

23 CONTINGENCY

24 13. This stipulation shall be subject to approval by the Medical Board of California.
25 Respondent understands and agrees that counsel for Complainant and the staff of the Medical
26 Board of California may communicate directly with the Board regarding this stipulation and
27 settlement, without notice to or participation by Respondent or its counsel. By signing the
28 stipulation, Respondent understands and agrees that they may not withdraw its agreement or seek

1 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
2 to adopt this stipulation, the Stipulated Settlement shall be of no force or effect, except for this
3 paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not
4 be disqualified from further action by having considered this matter.

5 14. The parties understand and agree that facsimile copies of this Stipulated Settlement,
6 including facsimile signatures thereto, shall have the same force and effect as the originals.

7 15. In consideration of the foregoing admissions and stipulations, the parties agree that
8 the Board may, without further notice or formal proceeding, issue and enter the following Order:

9 **ORDER**

10 IT IS HEREBY ORDERED that Respondent has violated Business and Professions Code
11 section 2225.5(a)(2). The Medical Board of California has agreed to waive the \$10,000 penalty
12 in exchange for the following:

13 1. Respondent shall timely comply with the Medical Board of California's requests for
14 certified patient records which include the signed Authorization For Release of Medical Records
15 signed by the patient or the legal representative pursuant to Business and Professions Code
16 section 2225.5(a)(2). Respondent shall provide the certified patient records "within 30 days of
17 receiving the request, authorization, and notice."

18 2. Respondent shall accept a copy of the signed Authorization For Release of Medical
19 Records signed by the patient or the legal representative.

20 3. Respondent shall accept the Medical Board of California's Authorization For Release
21 of Alcohol and Drug Abuse Information Form. (A true copy of the Medical Board of
22 California's Authorization For Release of Alcohol and Drug Abuse Information Form is attached
23 hereto as Exhibit B.) Respondent shall not require the Medical Board of California to use
24 Respondent's own Betty Ford form when the Medical Board of California seeks certified patient
25 records from Respondent.


26 4. Respondent admits that the Medical Board of California's Authorization For Release
27 of Medical Records (Exhibit B) complies with 42 CFR section 2.31.
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ACCEPTANCE

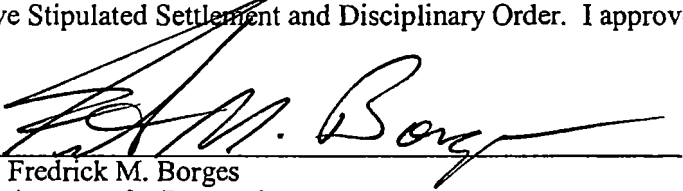
I have carefully read the above Stipulated Settlement and have fully discussed it with my attorney, Fredrick M. Borges. I enter into this Stipulated Settlement voluntarily, knowingly, and intelligently, and agree to be bound by the Stipulation of the Medical Board of California.

DATED: 3-15-12


BETTY FORD CENTER
Respondent

I have read and fully discussed with Respondent Betty Ford Center the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 3/19/12


Fredrick M. Borges
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement is hereby respectfully submitted for consideration by the Medical Board of California of the Department of Consumer Affairs.

Dated: January 17, 2013

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
GAIL M. HEPPELL
Supervising Deputy Attorney General


JESSICA M. AMGWERD
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Notification of Violation and Imposition of Civil Penalty No. 20-2011-214656

1 KAMALA D. HARRIS
2 Attorney General of California
3 GAIL M. HEPPELL
4 Supervising Deputy Attorney General
5 JESSICA M. AMGWERD
6 Deputy Attorney General
7 State Bar No. 155757
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9 P.O. Box 944255
10 Sacramento, CA 94244-2550
11 Telephone: (916) 445-7376
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14 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO June 10 20 11
BY Constance J. McMur

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Notification of Violation and
Imposition of Civil Penalty Against:

BETTY FORD CENTER
39000 BOB HOPE DRIVE
RANCHO MIRAGE, CA 92270-3297

Respondent.

Case No. 20-2011-214656

**NOTIFICATION OF VIOLATION
AND IMPOSITION OF CIVIL
PENALTY**

Complainant alleges:

PARTIES

1. Linda K. Whitney (Complainant), in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs, issues this Notification of Violation and Imposition of Civil Penalty to Betty Ford Center.

2. Betty Ford Center (Respondent), located at 39000 Bob Hope Drive, Rancho Mirage, CA 92270-3297, is a drug rehabilitation center.

JURISDICTION

3. This Notification of Violation and Imposition of Civil Penalty is brought before the Medical Board of California (Board), Department of Consumer Affairs.

///

1 4. Business and Professions Code Section 2004, states in pertinent part, the following:

2 **§ 2004. Board responsibilities**

3 The board shall have the responsibility for the following:

- 4 a. The enforcement of the disciplinary and criminal provisions of the Medical
5 Practice Act.
- 6 b. The administration and hearing of disciplinary actions.
- 7 c. Carrying out disciplinary actions appropriate to findings made by a medical
8 quality review committee, the division, or an administrative law judge.
- 9 d. Suspending, revoking, or otherwise limiting certificates after the conclusion of
10 disciplinary actions.
- 11 e. Reviewing the quality of medical practice carried out by physician and
12 surgeon certificate holders under the jurisdiction of the board.

13 5. Business and Professions Code Section 2220.05, states in pertinent part, the
14 following:

15 **§ 2220.05. Prioritization of investigative and prosecutorial resources; annual
16 report requirements**

17 (a) In order to ensure that its resources are maximized for the protection of the
18 public, the Medical Board of California shall prioritize its investigative and
19 prosecutorial resources to ensure that physicians and surgeons representing the
20 greatest threat of harm are identified and disciplined *expeditiously*. Cases
involving any of the following allegations shall be handled on a priority basis, as
follows, with the highest priority given to cases in the first paragraph: (Emphasis
added.)

21 (1) Gross negligence, incompetence, or repeated acts that involve death or serious
22 bodily injury to one or more patients, such that the physician and surgeon
represents a danger to the public.

23 ...
24

25 6. Business and Professions Code Section 2225.5 states in pertinent part, the following:

26 **§ 2225.5. Failure or refusal to comply with request or order for patient
27 records**

28 (a)(1) A licensee who fails or refuses to comply with a request for the certified
medical records of a patient, that is accompanied by the patient's written

1 authorization for release of records to the board, within 15 days of receiving the
2 request and authorization, shall pay to the board a civil penalty of one thousand
3 dollars (\$1,000) per day for each day that the documents have not been produced
4 after the 15th day, up to ten thousand dollars (\$10,000), unless the licensee is
5 unable to provide the documents within this time period for good cause.

6 (2) A health care facility shall comply with a request for the certified medical
7 records of a patient that is accompanied by that patient's written authorization for
8 release of records to the board together with a notice citing this section and
9 describing the penalties for failure to comply with this section. Failure to provide
10 the authorizing patient's certified medical records to the board within 30 days of
11 receiving the request, authorization, and notice shall subject the health care facility
12 to a civil penalty, payable to the board, of up to one thousand dollars (\$1,000) per
13 day for each day that the documents have not been produced after the 30th day, up
14 to ten thousand dollars (\$10,000), unless the health care facility is unable to
15 provide the documents within this time period for good cause. This paragraph
16 shall not require health care facilities to assist the board in obtaining the patient's
17 authorization. The board shall pay the reasonable costs of copying the certified
18 medical records.

19 ...
20 (e) Imposition of the civil penalties authorized by this section shall be in
21 accordance with the Administrative Procedure Act (Chapter 5 (commencing with
22 Section 11500) of Division 3 of Title 2 of the Government Code).

23 **FACTUAL BACKGROUND**

24 7. On October 21, 2010, the Medical Board received a consumer complaint against a
25 physician ("Physician Z"), concerning Physician Z's care and treatment of patient M.M.
26 Physician Z was employed by Respondent Betty Ford Center, where M.M. was receiving
27 treatment.

28 8. On November 2, 2010, patient M.M. signed a form release by the Medical Board,
entitled, Authorization For Release of Medical Records, to have Betty Ford Center release all of
his/her patient records to the Medical Board.

9. On November 15, 2010, the Medical Board sent Betty Ford Clinic a letter seeking
certified records of patient M.M., and included the signed Authorization For Release of Medical
Records signed by patient M.M. as set forth in the preceding paragraph. The Medical Board's
November 15, 2010, letter contained the following notice:

NOTICE: A licensee that fails to provide the *certified* medical records within 15 days, or a health care facility within 30 days, of receipt of a request for certified medical records may constitute a violation of Sections 2225(d) and 2225 of the Medical Practice Act (copy enclosed) and may result in a civil penalty of \$1,000 per day for each day that the documents have not been produced. "Certified medical records" is defined as "a copy of the patient's medical records authenticated by the licensee or health care facility, as appropriate, on a form prescribed by the board."

10. Betty Ford Center sent a letter dated December 2, 2010, indicating it was "unable to process" the Medical Board's request alleging that the Medical Board did not meet "the requirements for release of chemical dependency records under 42 CFR, Part 2". Additionally, Betty Ford Center insisted that the Medical Board was required to have patient M.M. sign an additional form using Betty Ford Center's own Authorization to Release Protected Health Information.

11. Betty Ford Center failed to provide a certified copy of patient M.M.'s medical records to the Medical Board within thirty days of receiving the request and patient authorization.

12. Thereafter, the Medical Board sent a letter to Betty Ford Center on December 28, 2010, seeking certified records of patient M.M. Included with the letter was an Authorization For Release of Alcohol and Drug Abuse Information, signed by patient M.M. on December 16, 2010. The Medical Board's December 28, 2010, letter contained the following notice:

NOTICE: A licensee that fails to provide the *certified* medical records within 15 days, or a health care facility within 30 days, of receipt of a request for certified medical records may constitute a violation of Sections 2225(d) and 2225 of the Medical Practice Act (copy enclosed) and may result in a civil penalty of \$1,000 per day for each day that the documents have not been produced. "Certified medical records" is defined as "a copy of the patient's medical records authenticated by the licensee or health care facility, as appropriate, on a form prescribed by the board."

13. On January 19, 2011, the Medical Board received a letter from Betty Ford Center, dated January 13, 2011, letter which stated the Betty Ford Center was unable to process the request due to the following four reasons of denial:

1. Please provide additional identifying information. Dates of stay would be particularly helpful. Patient identification must contain the patient's name at the time of admission.

///

2. Betty Ford Center medical records are protected by Title 42 of the Code of Federal Regulations, Part 2, and can only be released by special authorization. The patient must complete the enclosed authorization in its entirety and specify exactly what documents are to be released. If the authorization is not completed properly we will be unable to accommodate your request.

3. We require prepayment for copies of records. Upon receipt of a valid release, you will be contacted with the prepayment amount.

4. Other: We received your release, however, it does not meet our guidelines for the reasons checked above. Please find one of our blank releases enclosed. Have the client complete the release in its [sic] entirety and MAIL it back to us as we do not accept faxed or photocopied releases. Upon receipt of a valid release, we will contact you for pre-payment (if applicable). Thank you.

14. Betty Ford Center's objections set forth in its January 13, 2011, letter lacked merit. Since no medical records were forthcoming, on March 16, 2011, counsel for the Medical Board sent Ms. Teresa A. Costa, the Director, Health Information Management & Quality with Betty Ford Center, a four page letter, replete with legal authority requesting the medical records of patient M.M.

15. On April 14, 2011, Betty Ford Center requested that the Medical Board use its own signed releases for patient records. Thereafter, Betty Ford Center sent patient M.M. its own releases, further delaying document release.

16. Betty Ford Center did not provide to the Medical Board the certified copy of the medical records for patient M.M. until May 3, 2011. Betty Ford Center significantly delayed providing certified copies of medical records on patient M.M., without good cause.

DETERMINATION OF VIOLATION (Failure to Timely Provide Medical Records)

17. Complainant realleges paragraphs 7 through 16 above, as if fully set forth at this point. Respondent Betty Ford Center is subject to Imposition of Civil Penalty under section Business and Professions Code Section 2225.5(a)(2), in that it has failed to provide a certified copy of the medical records of patient M.M. within thirty days of receiving the request.

PENALTY

18. Based upon the foregoing Determination of Violation, the Medical Board imposes a civil penalty against Respondent Betty Ford Center, in the amount of ten thousand dollars

1 (\$10,000). Payment shall be made within 30 days of the effective date of this Notification.

2 Payment of the civil penalty shall be made to:

3 **Medical Board of California**
4 2005 Evergreen Street, Suite 1200
5 Sacramento, CA 95815

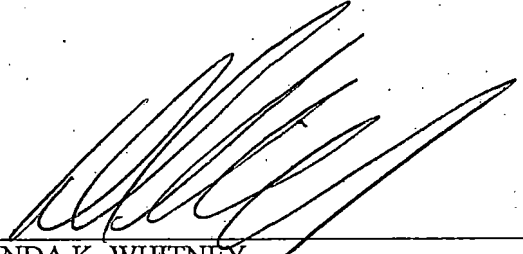
6 **RIGHT TO A HEARING**

7 19. Respondent Betty Ford Center may request a hearing to challenge this Notification of
8 Violation and Imposition of Civil Penalty. Appeal procedures are described in the Statement to
9 Respondent served along with this Notification.

10 **EFFECTIVE DATE**

11 20. This Notification is final and effective fifteen (15) days from the date this
12 Notification is served upon Respondent, unless Respondent requests a hearing within the fifteen
13 day period.

14
15 DATED: June 10, 2011

16 
17 LINDA K. WHITNEY
18 Executive Director
19 Medical Board of California
20 Department of Consumer Affairs
21 State of California
22 Complainant

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Exhibit B

Authorization For Release of Alcohol and Drug Abuse Information Form



MEDICAL BOARD OF CALIFORNIA
 ENFORCEMENT PROGRAM
 Central Complaint Unit
 2005 Evergreen St., #1200
 Sacramento, CA 95815
 (916) 263-2528 FAX (916) 263- 2435
www.mbc.ca.gov



AUTHORIZATION FOR RELEASE OF ALCOHOL AND DRUG ABUSE INFORMATION

Patient Name _____	Date of Birth _____	Date of Death _____
Medical Record Number (If known) _____	Control Number _____	
<p>I, the undersigned hereby authorize:</p> <p>Physician/ Facility: _____</p> <p>Address: _____</p> <p>City/State/Zip Code: _____</p> <p>Phone Number(s): _____ Treatment Date(s): _____</p>		
<p>to disclose alcohol and drug abuse records in the course of my diagnosis and treatment to the Medical Board of California, Enforcement Program, a "health oversight agency." This disclosure of records authorized herein is required for official use including investigation and possible administrative and/or criminal proceedings regarding any violations of the laws of the State of California. This authorization shall remain valid for three years from the date of signature. A copy of this authorization shall be as valid as the original. I understand that I have a right to receive a copy of this authorization if requested by me. I understand that I have the right to revoke this authorization by sending written notification to the Medical Board of California at the above address. My written revocation will be effective upon receipt by the Medical Board of California but will not be effective to the extent that such persons have acted in reliance upon this Authorization. I understand that the recipient of my information is not a health plan or health care provider and the released information may no longer be protected by federal privacy regulations.</p>		
<p>Patient Signature _____ Date _____</p> <p>or Legal Representative _____ Date _____</p> <p style="text-align: center;">Relationship _____</p>		
<p>NOTE: Failure by a physician, podiatrist or health care provider to provide the requested records within 15 days, or a health care facility within 30 days, of receipt of this request and authorization may constitute violations of Sections 2225 and/or 2225.5 of the Medical Practice Act and may result in further action by the Board. This release is compliant with the requirements of HIPAA and Civil Code Section 56.11.</p>		